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In the Supreme Court of the United States

DEVIN WELCH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari

BRIEF OF CENTER ON WRONGFUL CONVICTIONS OF YOUTH, JUVENILE LAW CENTER, ET AL., AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*

The organizations and individuals submitting this brief work with and on behalf of children and adolescents who come into contact with the juvenile justice system. *Amici* are juvenile law practitioners and researchers who, through decades of work representing, studying, and advocating on behalf of youth, have developed special expertise on the functioning of the juvenile courts. Based on this experience and settled empirical research, *Amici* share a deep concern that juvenile courts, as currently structured, may well be particularly prone to unreliable fact-finding. *Amici* know from their combined experience that juveniles' immaturity, vulnerability to external pressure and diminished ability to control impulses make them less culpable than adults and that the juvenile justice system was developed to take account of these distinct characteristics of youth. For these reasons, *amici* assert that prior juvenile adjudications should not be used to enhance adult criminal sentences above the statutory maximum.[1]

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[1] *Amici* file this brief with the consent of all parties. Letters of consent have been lodged with the Clerk of Court. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

IDENTITY OF *AMICI*

A list and brief description of all *Amici* appears at Appendix A.

SUMMARY OF ARGUMENT

Amici Curiae ask this Court to grant certiorari to clarify that juvenile adjudications should not be used to enhance subsequent adult criminal sentences under *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

This rule is proper for two reasons. First, as Judge Posner recognized in his dissenting opinion below, adjudications obtained in the juvenile court system as currently fashioned "may well lack the reliability of real convictions in criminal courts." *Welch v. United States*, 604 F.3d 408, 432 (7th Cir. 2010) (Posner, J., dissenting). This systemic risk of unreliability is a result of several factors, including the absence of jury trials; a juvenile court culture that discourages and sometimes precludes zealous and adversarial advocacy; and a heightened possibility that some of the evidence introduced in juvenile court, such as juvenile confessions, may be unreliable. Against such a backdrop, it would be fundamentally unfair to allow the use of juvenile adjudications to enhance adult sentences.

Second, the rule is consistent with this Court's longstanding recognition of the differences between adults and juveniles. Through more than six decades of jurisprudence, this Court has recognized that youth are different from adults; they are less mature, more vulnerable to external pressure, and more capable of redemption and growth. The juvenile justice system has historically functioned with these differ-

ences in mind. Quoting Judge Posner below, "[t]he constitutional protections to which juveniles have been held to be entitled have been designed with a different set of objectives in mind than just recidivist enhancement." *Id.* at 431. The use of juvenile adjudications to enhance adult sentences years later runs fundamentally contrary to the notion of a separate, protective juvenile court system.

ARGUMENT

I. The Absence of the Right To Trial By Jury in Juvenile Court, as Well as the Court's Continuing Informality, Present a Substantial Risk that Juvenile Adjudications Lack the Reliability of Criminal Convictions.

In 1967, this Court established that a defendant's right to have his innocence or guilt determined by a jury is "a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants." *Duncan v. Louisiana*, 391 U.S. 145, 157-58 (1967). Four years later, however, it declined to extend that right to children tried in juvenile court.[2] *McKeiver v.*

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[2] While Justice Blackmun's opinion in *McKeiver* has generally been cited as the opinion of the Court, the plurality opinions actually share no common rationale. A plurality opinion is the narrowest ground upon which an agreement among five justices can be inferred. *Marks v. United States*, 430 U.S. 188, 193 (1977) (expanding on and quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken

Pennsylvania, 403 U.S. 528 (1971). The *McKeiver* Court did so under the belief that "the imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding function." *Id.* at 547 (plurality opinion).

In 2000, this Court broadly reaffirmed the importance of the jury trial right in *Apprendi v. New Jersey*, holding that every fact used to enhance a criminal sentence beyond the statutory maximum, except prior criminal convictions, must be found by a jury. 530 U.S. 466 (2000). Rejecting the argument that other factors, found with more limited constitutional protections, could be used to enhance the defendant's criminal sentence, this Court wrote:

> If a defendant faces punishment beyond that provided by statute when an offense is committed under certain circumstances but not others, it is obvious that both the loss of liberty and the stigma attaching to the offense are heightened; it necessarily follows that the defendant should not – at the moment the State is put to proof of those circumstances – be deprived of protections that have, until that point, unquestionably attached.

Id. at 484. This decision has since been heralded as enshrining the jury trial right as part of the "fundamental triumvirate of procedural protections intended to guarantee the *reliability* of criminal convictions." *United States v. Tighe*, 255 F.3d 1187, 1193

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by those Members who concurred in the judgments on the narrowest grounds.'")

(9th Cir. 2001) (emphasis added); *see also, Cunningham v. California*, 549 U.S. 270 (2007); *United States v. Booker*, 543 U.S. 220 (2005); *Blakely v. Washington*, 542 U.S. 296 (2004); *Ring v. Arizona*, 536 U.S. 584 (2002).

The instant case highlights an intolerable tension between *McKeiver* and *Apprendi* that arises whenever a court uses a prior juvenile adjudication – obtained through a proceeding in which the defendant had no right to a jury trial – to enhance a subsequent criminal sentence. State and federal appellate courts across the country have split as to whether juvenile adjudications may be so used in light of *Apprendi*. Compare, *e.g.*, *Tighe*, 255 F.3d 1187 and *State v. Brown*, 879 So.2d 1276 (La. 2004) (both holding that nonjury juvenile adjudications cannot be used to increase a defendant's sentence beyond the statutory maximum) with *United States v. Smalley*, 294 F.3d 1030 (8th Cir. 2002) and *State v. Weber*, 149 P.3d 646 (Cal. 2009) (both holding that a nonjury juvenile adjudication can be so used). The issue has been well-analyzed by legal scholars. *See, e.g.*, Barry C. Feld, *The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 Wake Forest L. Rev. 1111 (2003); Joseph I. Goldstein-Breyer, *Calling Strikes Before He Stepped to the Plate: Why Juvenile Adjudications Should Not Be Used to Enhance Subsequent Adult Sentences*, 15 Berkeley J. Crim. L. 65 (2010); Ellen Marrus, *"That Isn't Fair, Judge": The Costs of Using Prior Juvenile Delinquency Adjudications in Criminal Court Sentencing*, 40 Hous. L.

Rev. 1323 (2004). It is ripe for resolution before this Court.

Central to the resolution of this tension are the concerns articulated by Judge Posner in his dissenting opinion below: key aspects of juvenile court practice as well as a growing body of scholarship indicate that juvenile court adjudications may well "lack the reliability of real convictions in criminal courts," in part due to the absence of the jury trial right. *Welch*, 604 F.3d at 432 (Posner, J., dissenting). *Amici* respectfully submit that these substantial concerns support a grant of certiorari by this Court in the instant case.

A) Juvenile Adjudications Must Rest on a Firm Foundation of Reliable Fact-Finding

The juvenile justice system has historically distinguished itself from the adult criminal justice system by emphasizing rehabilitation and limiting the adverse consequences that typically flow from criminal convictions. In keeping with these objectives, this Court has calibrated the child's right to procedural due process with the juvenile court's uniquely "intimate, informal, protective" atmosphere. *McKeiver*, 403 U.S. at 545; *In re Gault*, 387 U.S. 1, 16 (1967). For this reason, the fundamental right to a jury trial which undergirds our criminal justice system has been deemed inapplicable in juvenile proceedings. *McKeiver*, 403 U.S. at 545.

Even as juvenile courts undertake their rehabilitative mission, however, juvenile adjudications must rest on a firm foundation of reliable fact-

finding. Basic notions of due process demand no less; after all, the "same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child." *In re Winship*, 397 U.S. 358, 365 (1970); *see also McKeiver*, 403 U.S. at 543 (recognizing that the fundamental fairness standard governing juvenile court is primarily concerned with accurate fact-finding procedures).

In recent decades, the need to ensure reliable fact-finding in juvenile court has become even more pronounced. Nationwide, state legislatures have tilted juvenile courts away from an emphasis on rehabilitation to a greater focus on accountability and punishment. *See, e.g.*, Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in* Youth on Trial 9, 13-14 (Thomas Grisso & Robert G. Schwartz eds., 2000). Many juvenile adjudications now carry lasting collateral consequences, such as lifetime registration for juveniles who have been adjudicated delinquent of certain sex offenses. *See, e.g.*, 730 ILCS 150/2(A)(5) and 3(a) (LexisNexis 2010); *In re J.W.*, 787 N.E.2d 747 (2003), restrictions from serving in the military, *see* Army Regulations 601-210, ¶¶ 4-4, 4-32(5) (2007), possible eviction from public housing, *see Dept. of HUD v. Rucker*, 535 U.S. 125, 133-136 (2002) (upholding the practice of evicting tenants from public housing due to their illegal conduct), and potential immigration consequences, *Wallace v. Gonzalez*, 463 F.3d 135 (2d Cir. 2006) (upholding the Board of Immigration Appeals' consideration of prior juvenile adjudication in deciding whether to grant an alien's application for adjustment of status); *see also* Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of*

Counsel in Juvenile Delinquency Representation, 14 Lewis & Clark L. Rev. 771, 797 (2010). And as the current case illustrates, many state and federal courts lengthen adult sentences based on the existence of prior juvenile adjudications. With increased opportunities for adult-like consequences now flowing from juvenile delinquency adjudications, it is constitutionally imperative that the juvenile court system be able to determine reliably whether a child is innocent or guilty.

B) Research and Practice Suggest That Juvenile Court Findings Made In the Absence of a Jury May Be Less Reliable than Adult Criminal Convictions to Which the Jury Trial Right Attaches.

Since *McKeiver*, most states have continued to deny juveniles the right to a jury trial in juvenile court.[3] Consequently, most juvenile courts rely on

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[3] Juveniles currently have the right to request a jury trial in fourteen states: Alaska, Colorado, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Mexico, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wyoming. *See R.L.R. v. State*, 487 P 2d 27 (Alaska 1971); Col. Rev. Stat. § 19-2-107 (2010); *In re L.M.*, 186 P.3d 164, 110, 172 (Kan. 2008); Mass. Gen. Laws ch. 119, § 55A (2007); Mich. Comp. Laws § 712A.17 (2007); Minn. R. Juv. Del. P. 20.02 (2010); Mont. Code Ann. § 41-5-1502 (2007); N.M. Stat. § 32A-2-16 (2007); Okla. Stat. tit. 10, § 7303-4.1 (2007); S.D. Codified Laws § 26-7A-34 (2007); *Arwood v. State*, 463 S.W.2d 943 (Tenn. Ct. App. 1970); Tex. Fam. Code Ann. § 54.03 (2007); W.Va. Code § 49-5-6 (2007); Wyo. Stat. Ann. § 14-6-223 (2007).

judge-made factual findings for delinquency adjudications. The unique nature of juvenile court proceedings, however, can render these judge-made findings unreliable. *See* Martin Guggenheim & Randy Hertz, *Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials*, 33 Wake Forest L. Rev. 553, 564 (1998) (finding that juvenile court judges "often convict on evidence so scant that only the most closed-minded or misguided juror could think the evidence satisfied the standard of proof beyond a reasonable doubt"). Several factors contribute to this systemic risk of unreliable judicial fact-finding.

First, juvenile court judges are exposed to highly prejudicial, inadmissible evidence to a significantly greater extent than criminal court judges. Like criminal judges, of course, they are exposed to withdrawn guilty pleas, as well as confessions that are the subjects of pre-trial suppression hearings. This information alone is so prejudicial that it cannot always be ignored during the merits stage, even by the most conscientious of judges. *See, e.g., Arizona v. Fulminante*, 499 U.S. 279, 313 (1991) (Kennedy, J., concurring in the judgment) (describing "the indelible impact a full confession may have on the trier of fact"); *United States v. Walker*, 473 F.2d 136, 138 (D. C. Cir. 1972) (stating that although a "judge is presumed to have a trained and disciplined judicial intellect...even the most austere intellect has a subconscious").

Unlike criminal court judges, however, juvenile court judges are also often exposed to additional inadmissible background information that may further skew their perception of a defendant's guilt or

innocence. In many jurisdictions, for instance, a juvenile judge may be exposed at a pre-trial detention hearing to a youth's "social history" file, documenting the youth's prior record of police contacts and delinquency adjudications. Barry C. Feld, *Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court*, 69 Minn. L. Rev. 141, 240 (1984). When the same judge later presides over that juvenile's trial, his perception of the juvenile's guilt or innocence may be influenced by his detailed knowledge of the juvenile's history. Similarly, juvenile court judges often gain access to information about a juvenile's family background, whether through the social history file or through the judge's own previous experience presiding over the adjudications of family members. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 305-06 (2007). A child who comes from a family of known "troublemakers" may fare worse before a judge who is familiar with that fact. Indeed, some scholars have noted that in such scenarios, juvenile judges may be more likely to adjudicate children delinquent simply in order to channel them towards court-ordered treatment, under the belief that treatment would help them escape their family's influence. *See* Guggenheim & Hertz, *supra*, at 570.

Further, because much youth crime involves group activity, juvenile court judges frequently preside over joint trials of multiple co-defendants, including some who have confessed and implicated other co-defendants, *see id.* at 571, or over the trials of youth whose co-defendants have already entered guilty pleas before that same judge. Drizin & Luloff,

supra, at 305. Even if some judges are able to set such facts aside, not every judge can or does. *See* Harry Kalven Jr. & Hans Zeisel, *The American Jury* 107 (2d ed. 1971) (identifying the existence of facts that only the judge knew as a statistically significant reason for disagreement between judges and juries).

Moreover, the jury trial right is premised in part on the view that the collective decision-making that characterizes jury fact-finding produces more reliable determinations than judicial fact-finding alone. The jury model's central virtue is its ability to bring people "from different walks of life...into the jury box," thereby ensuring that a "variety of different experiences, feelings, intuitions and habits" inform the jury's decision-making. *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 18 (1955). Social scientists have discovered that this richness of perspective is what makes juries such excellent triers of fact; by exchanging ideas and learning from each other's experiences, jurors can construct a multi-faceted, deep understanding of the case being tried. *See* Guggenheim & Hertz, *supra*, at 576. This collective perspective is simply not present in judicial fact-finding.

Indeed, empirical studies have found that judges and juries do not reach equivalent results; judges are more likely to convict than juries. *See* Kalven & Zeisel, *supra*. This may be particularly relevant in juvenile court, where jurors might share the widespread view that young defendants are less blameworthy and more capable of redemption than their adult counterparts. *See* Feld, *Criminalizing*, *supra* at 246; *Duncan*, 391 U.S. at 147 ("When juries differ with the result at which the judge would have

arrived, it is usually because they are serving some of the very purposes for which they were created.").

Moreover, even if judges were as effective at fact-finding as juries, the right to a jury trial would still be vital, and constitutionally required. In *Duncan v. Louisiana*, this Court held that the Fourteenth Amendment extends the right to a trial by jury to defendants facing prosecutions under state law when they face punishment for a "serious" offense. 391 U.S. 145, 154 (1968). The *Duncan* Court declared that fundamental fairness entitles the defendant to a jury trial to ensure a buffer against arbitrary government action, explaining that:

> A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. . . . Providing an accused with the right to be tried by a jury [gives] him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased or eccentric judge . . . Fear of unchecked power . . . [finds] expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.

Id at 155-56. To impose serious adult consequences on a defendant without granting the right to a jury trial makes the defendant vulnerable to criminal punishment without the fundamental protections central to our system of justice.[4]

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[4] Notably, those states with laws exposing juveniles to potential adult consequences through blended sentencing or youthful of-

C) Juvenile Court Practice May Further Undermine the Reliability of Juvenile Adjudications.

The problems associated with judge-made factual findings are compounded in juvenile court by a number of other unique hurdles that can hinder the task of reliable fact-finding. While juveniles have a long-established constitutional right to counsel in juvenile proceedings, *In re Gault*, 387 U.S. 1 (1967), the adequacy of such representation has been a persistent concern for scholars and practitioners alike. *See* Fedders, *supra*, at 791-95; Drizin & Luloff, *supra*, at 283; ABA Juvenile Justice Ctr., Juvenile Law Ctr., and Youth Law Ctr., *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 5-12 (1995); Nat'l Juvenile Defender Ctr., *Illinois: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings* 48-60 (Oct. 2007); *see also* Nat'l Juvenile Defender Ctr., *Assessments*.

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fender statutes grant juveniles the right to a jury trial. *See* Ark. Code Ann § 9-27-325 (2007); Colo. Rev. Stat. § 19-2-107 (2007); Conn. Gen. Stat. §§ 46b-133c and 46b-133d (2007); Idaho Code Ann. § 20-509 (2007); 705 Ill. Comp. Stat. 405/5-810 (2007) ;Kan. Stat. Ann §§ 38-2347 and 38-2357 (2007); Minn. Stat. § 260B.130 (2007); N.H. Rev. Stat. Ann. § 169-B:19 (2007); Ohio Rev. Code Ann. § 2151.35 (LexisNexis2007); R.I. Gen. Laws § 14-1-7.3 (2007); Va. Code Ann. § 16.1-241 (2007). Illinois has taken this one step further, giving juveniles the right to jury trials in proceedings that could result in determinate sentences of confinement in juvenile correctional institutions until their twenty-first birthdays. *See* 705 Ill. Comp. Stat. 405/5-815 and 5-820

http://www.njdc.info/assessments.php (last visited Oct. 1, 2010) (presenting assessments of nineteen states that report the need for reform on issues related to timing of appointment of counsel, frequency of waiver, attorney compensation, supervision and training, and access to investigators); Judith B. Jones, U. S. Dep't of Justice Office of Juvenile Justice & Delinquency Prevention, *Juvenile Justice Bulletin* 2 (Jun. 2004) (acknowledging that competent juvenile defense counsel will help defendants avoid self-incrimination, protect their constitutional rights, and mount an adequate defense). The importance of the assistance of counsel for youth in juvenile court has become even more pronounced, as research has revealed that "juveniles as a class are ill-equipped to understand, manage, or navigate the complexities of the modern juvenile (or adult) justice system." Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 Rutgers L. Rev. 175, 182 (2007).

Despite the vital role attorneys play in juvenile court, many children still appear without counsel. Even forty years after *Gault* and the subsequent development of comprehensive standards by the Institute of Judicial Administration and American Bar Association that, among other things, urge the prohibition of juvenile waiver of counsel, many states still allow juvenile defendants to waive these rights.[5]

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[5] The absence of counsel from juvenile proceedings is of particular concern given the high rates of juvenile guilty pleas. *See* Fedders, *supra*, 795; Wallace J. Mlyniec, *In re Gault at 40: The Right to Counsel in Juvenile Court - A Promise Unfulfilled*, 44

Inst. Jud. Admin. A.B.A., *Juvenile Justice Standards Annotated: A Balanced Approach* 255 (Robert E. Shepherd, Jr. ed., 1996). These waivers are frequently accepted even when the child does not adequately understand what "waiver" means or how an attorney might assist him or her.[6] Drizin & Luloff, *supra*, at 285.

Even when juveniles are represented, lack of resources and time constraints often leave children's lawyers overburdened and ill-prepared to provide adequate representation. *See* Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 Geo. J. on Poverty L. & Pol'y 543, 559-60.[7] In juvenile courts across the country,

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No. 3 Crim. L. Bull. 371, 394 (2008) (summarizing studies of four states estimating that approximately ninety percent or more of delinquency cases were resolved by plea). A shocking example of the tragic consequences that can occur in the absence of counsel is evident in the Pennsylvania Supreme Court's finding of former Luzerne County juvenile judge Ciavarella's "systematic failure to explain to the juveniles [before him] the consequences of foregoing trial, and the failure to ensure that the juveniles were informed of the factual bases for what amounted to peremptory guilty pleas" in his courtroom. *See In Re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008*, No. 81 MM 2008, 2009 Pa. LEXIS 2286 at *6 (Pa. Oct. 29, 2009).

[6] In a recent study of ninety-nine appeals challenging a juvenile's waiver of right to counsel, roughly eighty resulted in the adjudication being overturned. Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 Fla. L. Rev. 577, 609 (2002).

[7] An increase in the publication of, and national attention to, aspirational guidelines for access to counsel in juvenile court serves as acknowledgement of a broken system. *See* Nat'l Juve-

attorneys often fail to do any factual investigation, including interviewing witnesses, visiting crime scenes, or hiring investigators. *See* Majd & Puritz, *supra*, at 558 (describing how defenders "often must represent clients without the most basic tools" like computers, internet access and necessary investigators, social workers or paralegals). Similarly, some lawyers practicing in juvenile court fail to file pretrial motions, prepare for dispositional hearings and bench trials, or even meet with their clients outside of court appearances. *See* Fedders, *supra*, at 792-93. Attorneys rely heavily on the defendant and his or her parents to identify and produce any necessary witnesses. Rarely will counsel have the resources to hire an investigator to examine the merits of the case. *See* Drizin & Luloff, *supra*, at 289-90.

Additionally, since its inception, the juvenile justice system has fostered an informal, non-adversarial culture that downplays and even discourages zealous advocacy. *See McKeiver*, 403 U.S. at 545 (noting that juvenile court proceedings lack the "fully adversary" character of adult criminal trials). This culture has its roots in the *parens patriae* underpinnings of the juvenile court, in which the court

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nile Defender Ctr. & Nat'l Legal Aid & Defender Assoc., *The Ten Core Principles for Providing Quality Delinquency Representation* (Jul. 2008), *available at* http://www.njdc.info/pdf/10_Core_Principles_2008.pdf (recognizing that legal representation of children is a specialized area of law and the right to counsel can be fully implemented only if there is resource parity and ongoing training); Nat'l Council of Juvenile & Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 105 (2005), *available at* http://www.ncjfcj.org (calling for greater role of counsel in juvenile court).

was conceived as a benevolent actor seeking to promote children's "best interests" and welfare. *See* Feld, *Criminalizing*, *supra*, at 187. Unfortunately, many juvenile courts continue to "view zealous advocacy as antithetical to rehabilitation." Majd & Puritz, *supra*, at 555. Some attorneys, believing that their client will be best served by submitting to the consequences of a juvenile adjudication, may fail to research and investigate cases even when the client requests it. *See* Fedders, *supra*, at 794-95.

By discouraging juvenile defense attorneys from zealously subjecting the State's claims to the full-blown "crucible of meaningful adversarial testing," *United States v. Cronic*, 466 U.S. 648, 656 (1984), this culture makes reliability a secondary concern. In effect, accurate fact-finding and the child's constitutional rights are subordinated to the attorney's or court's perception of the child's best interests and need for treatment. *See* Majd & Puritz, *supra*, at 555-56 (describing reports that juvenile courts and judges place a "premium" on "maintaining a friendly atmosphere" that discourages some attorneys from filing motions or pursuing defenses).

Another significant barrier to reliable fact-finding in juvenile court concerns the nature of the evidence regularly introduced against children. This Court has recognized that juveniles are categorically less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults. *Roper v. Simmons*, 543 U.S. 551, 569 (2005);

Graham v. Florida, 130 S. Ct. 2011, 2030 (2010).[8] These youthful traits make juveniles particularly susceptible to the pressures of even a standard police interrogation by falsely confessing. *See Corley v. United States*, 129 S. Ct. 1558, 1570 (2009) (stating that "there is mounting empirical evidence that these pressures [associated with custodial interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed") (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. Rev. 891, 906-07 (2004)); Saul Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3 (2010) *available at* http://www.springerlink.com/content/85vh322j08578410/fulltext.pdf (noting that juveniles' developmental differences put them at special risk for false confessions in the interrogation room); *In re. Gault*, 387 U.S. at 52 (stating that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children"). In fact, a recent empirical study of proven wrongful convictions of youth has found that juveniles are twice as likely as their adult counterparts to confess to crimes they did not commit. *See* Joshua A. Tepfer,

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[8] Defenders who represent youth must possess specialized skills and a sophisticated understanding of the line of cases from this Court that recognize the ever-expanding body of research about normative adolescent development. Frequently, however, juvenile court is dismissed by attorneys as "kiddie court"– merely a training ground for adult criminal court. This revolving door through juvenile court leaves young people with the most inexperienced attorneys and inhibits defenders' development of expertise in juvenile matters. *See* Majd & Puritz, *supra*, at 556-58.

Laura H. Nirider, & Lynda M. Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. (2010) (forthcoming 2010). Unfortunately, these false confessions often result in wrongful adjudications and convictions, since confession evidence is considered "the most compelling possible evidence of guilt." *Miranda v. Arizona*, 384 U.S. 436, 466 (1966) (citing *Mapp v. Ohio*, 367 U.S. 643, 685 (1961) (Harlan, J., dissenting)).

Concerns about the use of unreliable evidence against juveniles extend past the problem of false confessions. Not only are juveniles more likely than adults to giving false confessions during police questioning, but they are also more likely to implicate others falsely – frequently other children. Tepfer, Nirider & Tricarico, *supra*. Similarly, juveniles may be more prone to making unreliable eyewitness identifications, since they are easily influenced by the behavior of law enforcement officers during lineups which may subtly steer the child toward a particular individual. Drizin & Luloff, *supra*, at 276; Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 The Future of Child. 15 (2008). Collectively, these findings may blunt the reliability of substantial amounts of the evidence routinely relied upon in juvenile court.

These obstacles to reliable fact-finding in juvenile court are neither universal nor irremediable – indeed, as Judge Posner pointed out in his dissenting opinion, it would be "hasty" to reach such conclusions. *Welch v. United States*, 604 F.3d at 432 (Posner, J., dissenting). However, these concerns are sufficiently weighty to justify the exclusion of juvenile adjudications from the adult sentencing calculus.

Amici submit that the use of such potentially flawed juvenile adjudications to enhance adult criminal sentences beyond the statutory maximum is contrary to *Apprendi*.

II. Using Juvenile Adjudications to Enhance Adult Criminal Sentences Ignores Both the Settled Differences Between Juveniles and Adults and the Justifications for a Separate Juvenile Justice System

As Justice Felix Frankfurter wrote more than fifty years ago, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning i[f] uncritically transferred to determination of a state's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Subsequently, for more than sixty years, this Court has strictly adhered to the notion that the law should categorically treat juveniles differently than adults. *See Graham v. Florida*, 130 S. Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *In re Gault*, 387 U.S. 1 (1967); *Kent v. United Statesf*, 383 U.S. 541, (1966); *Gallegos v. Colorado*, 370 U.S. 49 (1962); *Haley v. Ohio*, 332 U.S. 596 (1948) .

Most recently in *Roper v. Simmons* and *Graham v. Florida*, this Court recognized that juvenile offenders, whose personal and developmental attributes sharply distinguish them from adults, should be spared the harshest adult sentences under the Eighth Amendment to the Constitution. In prohibiting the execution of juvenile offenders, the *Roper*

Court recognized that the differences between children and adults have been confirmed by decades of psychological and cognitive development research. Relying on that research, the Court concluded that, as compared to adults, juveniles have a "lack of maturity and an undeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their character is not yet "as well formed as that of an adult." *Roper*, 543 U.S. at 569-70. For those reasons, it determined that juveniles are categorically less culpable and more capable of rehabilitation and redemption than adults. *Id.* at 570-71. Last term, in *Graham*, this Court reaffirmed the rationale underlying *Roper*, declaring that "[n]o recent data provide reason to reconsider the court's observations in *Roper* about the nature of juveniles. "Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham*, 130 S. Ct. at 2026.

In an analogous situation, the Supreme Court of South Dakota recently adopted the reasoning of *Graham* in declining to consider a criminal defendant's prior juvenile adjudication at sentencing. Relying on this Court's holdings in *Roper* and *Graham* that juveniles are less mature – and therefore less culpable – than adults, and that "from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed[,]" *Graham*, 130 S. Ct. at 2026-27 (quoting *Roper*, 543 U.S. at 570), the court explained:

> Indeed, changes in a defendant's circumstances, such as age, "may render the earlier uncharged act too remote and legally irrelevant." Edward J. Imwinkelried, 2 Uncharged Misconduct Evidence § 8:8 (Rev. ed. 1998). Thus, a "time lapse could be fatal to admissibility of the evidence if the defendant was a callow teenager at the time of the earlier crime." *Id.* "Because of the considerable changes in character that most individuals experience between childhood and adulthood, behavior that occurred when the defendant was a minor is much less probative than behavior that occurred while the defendant was an adult." *State v. Barreau*, 651 N.W.2d 12, 23 (Wis. Ct. App. 2002) (citations omitted) (error to admit prior offense committed when defendant was a minor).

State v. Fisher, 783 N.W.2d 664, 674 (S.D. 2010). As the court recognized, to permit "remote and legally irrelevant" prior juvenile adjudications to influence adult sentencing fails to adequately account for the key distinctions between juveniles and adults.

Permitting the use of juvenile adjudications to enhance subsequent criminal sentences is also at odds with *McKeiver*'s promise of a protective juvenile court. As the Louisiana Supreme Court held in *State v. Brown*, it is "contradictory and fundamentally unfair to provide youths with fewer procedural safeguards in the name of rehabilitation and then to use adjudications obtained for treatment purposes to punish them more severely as adults." 979 So. 2d 1276, 1288 (La. 2004).

Indeed, using juvenile adjudications to enhance adult sentences erodes the boundaries between juvenile and adult courts. Juvenile court has historically been shaped by its recognition of the differences in culpability between children and adults. Even as recent state legislative changes have narrowed the boundaries of juvenile court and pushed more juveniles into the adult system, every state has continued to maintain a separate juvenile justice system in recognition of the unique characteristics of youth. Using delinquency adjudications years later to enhance an adult's sentence "put[s] an effective end to what ha[d] been the idealistic prospect of an intimate, informal protective proceeding." *McKeiver*, 403 U.S. at 545.

The conflict inherent in erosion of the boundaries between juvenile and criminal courts is compounded by McKeiver's holding that jury trials are not constitutionally required in juvenile proceedings. *McKeiver* denied juveniles the right to a jury trial because juvenile proceedings were not criminal prosecutions and because judges based dispositions on the needs of the offender rather than the gravity of the offense. *See* Feld, *Constitutional*, *supra*, at 1193-94. To deprive juveniles of adult procedures but then impose adult consequences is fundamentally unfair. The Louisiana Supreme Court recognized this conflict, deeming it "contradictory and fundamentally unfair" to deny juveniles the full panoply of adult procedural safeguards in juvenile court but then to equate their juvenile adjudications with adult convictions for the purpose of adult sentencing. *State v. Brown*, 979 So. 2d at 1288; *see also* Feld, *Constitutional*, *supra*, at 1194 (prohibiting the use of juvenile

adjudications to enhance subsequent criminal convictions).

States cannot have it both ways. Juveniles must be spared adult-like sanctions or consequences in exchange for the lesser procedural safeguards, or full due process protections under the Constitution must be made available in juvenile court, including the right to jury trials.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this Court grant petitioner Devin Welch's petition for a writ of certiorari.

Respectfully submitted,

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Appendix A

Welch v. U.S.

Identity of *Amici* and Statements of Interest

Organizations

The **Barton Child Law & Policy Center** is a program of Emory Law School dedicated to ensuring safety, well-being and permanency for abused and court-involved children in Georgia. The mission of the center is to promote and protect the well-being of neglected, abused and court-involved children in the state of Georgia, to inspire excellence among the adults responsible for protecting, nurturing, and defending these children and youth, and to prepare child advocacy professionals.

The Barton Center was founded in March 2000. The Center has been involved in representation of juveniles in delinquency cases since the summer of 2001. The Barton Center currently houses the Barton Child Law and Policy Clinic (CLPC) and the Barton Juvenile Defender Clinic (JDC). CLPC focuses on policy and legislative reform and provides students with clinical experiences in developing and implementing evidence-based policies. JDC provides a clinical experience for third year law students in the juvenile court arena. The focus of the clinical experience is to provide quality representation to court involved children and youth by ensuring fairness and due process in their court proceedings and by ensuring they receive the holistic representation they need. Legal services provided by the JDC are provided at no cost to our clients.

The **Center for Children's Advocacy (CCA)** is a non-profit organization based at the University of Connecticut Law School and is dedicated to the promotion and protection of the legal rights of poor children. The children represented by CCA are dependent on a variety of Connecticut state systems, including judicial, health, child welfare, mental health, education and juvenile justice. CCA engages in systemic advocacy focusing on important legal issues that affect a large number of children, helping to improve conditions for abused and neglected children in the state's welfare system as well as in the juvenile justice system. CCA works to ensure that children's voices are heard and that children are afforded legal protections everywhere – community, foster placements, educational institutions, justice system and child welfare.

The **Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered, evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Virgil

Hawkins Civil Clinic and Gator TeamChild juvenile law clinic.

The **Central Juvenile Defender Center**, a training, technical assistance and resource development project, is housed at the Children's Law Center, Inc. In this context, it provides assistance on indigent juvenile defense issues in Ohio, Kentucky, Tennessee, Indiana, Arkansas, Missouri, and Kansas.

The **Center on Wrongful Convictions of Youth** (CWCY) is part of Northwestern University School of Law's Bluhm Legal Clinic and is a joint project of two of the Clinic's highly acclaimed Centers: the Children and Family Justice Center and the Center on Wrongful Convictions. The CWCY's unique mission is to uncover and remedy wrongful adjudications and convictions of children, as well as to promote public awareness and support for nationwide initiatives – such as efforts to reduce juvenile false confessions and increase reliability in the juvenile court system -- aimed at preventing future wrongful convictions. In so doing, the CWCY works with experienced juvenile attorneys and wrongful conviction experts across the nation on a daily basis. Most recently, CWCY attorneys secured the exoneration and release of Thaddeus Jimenez, a young man who was arrested at age thirteen and sentenced to forty-five years in prison for a murder that he did not commit. See Matthew Walberg, Teen, Wrongly Convicted, Out 16 Years Later as Man, Chicago Tribune, May 5, 2009. The founder of the CWCY, Steven Drizin, has also recently been cited by the United States Supreme Court as an authority on

false confessions and wrongful convictions. Corley v. U.S., 129 S. Ct. 1558, 1570 (2009) (stating that "there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed") (citing Steven Drizin and Richard Leo, The Problem of False Confessions in the Post-DNA World, 82 N. C. L. Rev. 891, 906-07 (2004)).

The Northwestern University School of Law's Bluhm Legal Clinic has represented poor children in juvenile and criminal proceedings since the Clinic's founding in 1969. The **Children and Family Justice Center** (CFJC) was established in 1992 at the Clinic as a legal service provider for children, youth and families and a research and policy center. Six clinical staff attorneys currently work at the CFJC, providing legal representation and advocacy for children in a wide variety of matters, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, immigration and political asylum, and appeals. CFJC staff attorneys are also law school faculty members who supervise second- and third-year law students in the legal and advocacy work; they are assisted in this work by the CFJC's social worker and social work students.

The **Children's Law Center, Inc.** in Covington, Kentucky has been a legal service center for children's rights since 1989, protecting the rights of youth through direct representation, research and policy development and training and education. The Center provides services in Kentucky and Ohio, and

has been a leading force on issues such as access to and quality of representation for children, conditions of confinement, special education and zero tolerance issues within schools, and child protection issues. It has produced several major publications on children's rights, and utilizes these to train attorneys, judges and other professionals working with children.

Founded in 1977, the **Children's Law Center of Massachusetts (CLCM)** is a private, non-profit legal services agency that provides direct representation and appellate advocacy for indigent children in juvenile justice, child welfare and education matters. CLCM attorneys regularly participate as faculty in MCLE and other continuing legal education seminars and serve as *amicus curiae* in juvenile justice and child welfare matters in Massachusetts courts. The CLCM is particularly concerned with fair treatment and outcomes for juveniles in delinquency proceedings and in adult court.

The ***Civitas* ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and

governmental institutions responsible for addressing the needs and interests of court-involved youth.

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated. Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and indentify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, post-disposition and appeal, and that the juvenile and adult criminal justice systems take into account the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

The **Juvenile Justice Initiative** (JJI) of Illinois is a non-profit, non-partisan, inclusive statewide coalition of state and local organizations, advocacy groups, legal educators, practitioners, community service providers and child advocates supported by private donations from foundations, individuals and legal firm. JJI as a coalition establishes or joins broad-based collaborations

developed around specific initiatives to act together to achieve concrete improvements and lasting changes for youth in the justice system, consistent with the JJI mission statement. Our initiatives seek to create a constituency for youth in the justice system with an emphasis on promoting intervention strategies, ensuring fairness for youth in the justice system, and building community resources for comprehensive continuums of services and sanctions to reduce reliance on confinement. Our collaborations work in concert with other organizations, advocacy groups, concerned individuals and state and local government entities throughout Illinois to ensure that fairness and competency development are public and private priorities for youth in the justice system.

The **Midwest Juvenile Defender Center** (MJDC) is an eight state regional network of defense attorneys representing juveniles in the justice system. It was created to increase the capacity of juvenile defenders in the Midwest. MJDC gives juvenile defense attorneys a more permanent capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime. MJDC provides support to juvenile defenders to ensure that youth are treated fairly in the justice system.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of

representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The mission of the **National Juvenile Justice Network** (NJJN) is to enhance the capacity of state-based juvenile justice coalitions and organizations to advocate for state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in, or at risk of becoming involved in, the justice system. NJJN currently comprises thirty-nine members in thirty-three states, all of which seek to establish effective and appropriate juvenile justice systems. NJJN recognizes that youth are fundamentally different from adults and should be treated in a developmentally appropriate manner focused on their rehabilitation. Youth should not be transferred into the punitive adult criminal justice system where they are subject to extreme and harsh sentences such as life without the possibility of parole, and are

exposed to serious, hardened criminals. NJJN supports a growing body of research that indicates the most effective means for addressing youth crime are rehabilitative, community-based programs that take a holistic approach, engage youth's family members and other key supports, and provide opportunities for positive youth development.

The **Office of the State Appellate Defender** is a state agency created by the Illinois legislature in 1972. Its main purpose is to represent indigent persons on appeal from criminal and delinquent minor proceedings when appointed to do so by a court. Many of the agency's clients are affected by the use of their prior juvenile court adjudications in aggravation at sentencing. The issue of the reliability of these adjudications is thus of particular importance to the agency and its clients.

The **Rutgers Urban Legal Clinic**, a clinical program of Rutgers Law School – Newark, was established over thirty years ago to assist low-income clients with legal problems that are caused or exacerbated by urban poverty. The Clinic's Criminal and Juvenile Justice section provides legal representation to individual clients and undertakes public policy research and community education projects in both the juvenile and criminal justice arenas. In recent years, ULC students and faculty have worked with the New Jersey Office of the Public Defender, the New Jersey Institute for Social Justice, the Essex County Juvenile Detention Center, Covenant House – New Jersey, staff of the New Jersey State Legislature, and a host of national organizations on a range of juvenile justice practice

and policy issues, including questions pertaining to the due process and fourth amendment rights of young people.

The Sentencing Project is a national non-profit organization engaged in research and education regarding criminal justice policy. The organization has produced a series of books, policy reports, and journal articles assessing the effects of sentencing policies and practices on public safety and individual defendants. Staff of The Sentencing Project are frequently called upon to testify before Congress and other legislative bodies regarding the effects of mandatory sentencing and related policies, and to recommend alternative policy options. The organization has also been engaged in analyzing the effects of trying juveniles in the adult court system, and the impact of adult sentences on deterrence and recidivism.

Individuals

Tamar Birckhead is an assistant professor of law at the University of North Carolina at Chapel Hill where she teaches the Juvenile Justice Clinic and the criminal lawyering process. Her research interests focus on issues related to juvenile justice policy and reform, criminal law and procedure, and indigent criminal defense. Professor Birckhead's 2008 article on raising the age of juvenile court jurisdiction in North Carolina has received significant attention at both the state and national

levels. Licensed to practice in North Carolina, New York and Massachusetts, Professor Birckhead has been a frequent lecturer at continuing legal education programs across the United States as well as a faculty member at the Trial Advocacy Workshop at Harvard Law School. She is vice president of the board for the North Carolina Center on Actual Innocence and has been appointed to the executive council of the Juvenile Justice and Children's Rights Section of the North Carolina Bar Association. Professor Birckhead received her B.A. degree in English literature with honors from Yale University and her J.D. with honors from Harvard Law School, where she served as Recent Developments Editor of the Harvard Women's Law Journal. She regularly consults on matters within the scope of her scholarly expertise, including issues related to juvenile justice policy and reform, criminal law and procedure, indigent criminal defense, and clinical legal education. She is frequently asked to assist litigants, advocates, and scholars with amicus briefs, policy papers, and expert testimony, as well as specific questions relating to juvenile court and delinquency.

Professor **Emily Buss** is the Mark and Barbara Fried Professor of Law and Kanter Director of Policy Initiatives at the University of Chicago Law School. Her research and scholarship is in the area of children's and parental rights. Recent articles include *Constitutional Fidelity Through Children's Rights*, 2004 Supreme Court Review 355, which demonstrates the need to account for child and adolescent development in applying constitutional rights to minors.

Martin Guggenheim is the Fiorello La Guardia Professor of Clinical Law at N.Y.U. Law School, where he has taught since 1973. He served as Director of Clinical and Advocacy Programs from 1988 to 2002 and also was the Executive Director of Washington Square Legal Services, Inc. from 1987 to 2000. He has been an active litigator in the area of children and the law and has argued leading cases on juvenile delinquency and termination of parental rights in the Supreme Court of the United States. He is also a well-known scholar whose books include "What's Wrong with Children's Rights" published by Harvard University Press in 2005 and "Trial Manual for Defense Attorneys in Juvenile Court," published by ALI-ABA in 2009 which was co-authored with Randy Hertz and Anthony G. Amsterdam. He has won numerous national awards including in 2006 the Livingston Hall Award given by the American Bar Association for his contributions to juvenile justice.

Kristin Henning is a Professor of Law at Georgetown University School of Law and Co-Director of the Georgetown Juvenile Justice Clinic. The Clinic was founded in 1973 to represent children accused of misdemeanor and felony offenses in the District of Columbia. Clinic faculty, fellows and students provide highly effective holistic representation to their clients by protecting the rights and interests of youth in the juvenile justice system, advocating on behalf of youth in related proceedings such as special education and school disciplinary hearings and lobbying for mental health services, drug treatment and other interventions that are appropriately matched with the child's age,

mental capacity and developmental stage. Clinic faculty and alumni engage in local, regional and national juvenile justice reform by training defenders throughout the country, developing local and national juvenile justice standards for lawyers and other stakeholders, writing and updating practice manuals, conducting research and publishing law review articles that analyze the need for reform and consulting with local and state officials to advance reform efforts.

Randy Hertz is a clinical professor at N.Y.U. Law School, the vice dean of the law school, the director of the school's clinical program, and the supervising attorney of the school's Juvenile Defender Clinic. Before joining the N.Y.U. faculty, he worked at the Public Defender Service for the District of Columbia, in the juvenile, criminal, appellate and special litigation divisions. He writes in the areas of juvenile and criminal justice and is the co-author, with Professors Anthony G. Amsterdam and Martin Guggenheim of N.Y.U. Law School, of "Trial Manual for Defense Attorneys in Juvenile Court" (now in its second edition) and, with Professor James Liebman of Columbia Law School, of "Federal Habeas Corpus Law and Practice" (the sixth edition of which will be issued in 2011). He is an editor-in-chief of the Clinical Law Review and the former Chair of the ABA's Section of Legal Education and Admissions to the Bar. He is the recipient of the American Bar Association's Livingston Hall award for advocacy in the juvenile justice field; the Association of American Law Schools' William Pincus Award for Outstanding Contributions to Clinical Legal Education; the law

school's award for Distinguished Teaching; and the University's award for Distinguished Teaching by a University Professor.

Barry Feld is Centennial Professor of Law, University of Minnesota Law School. He received his B.A. from the University of Pennsylvania; his J.D. from University of Minnesota Law School; and his Ph.D. in sociology from Harvard University. He has written eight books and about seventy law review and criminology articles and book chapters on juvenile justice with a special emphasis on serious young offenders, procedural justice in juvenile court, adolescents' competence to exercise and waive *Miranda* rights and counsel, youth sentencing policy, and race. One of his earliest books, *Neutralizing Inmate Violence: Juvenile Offenders in Institutions* (Ballinger 1976), studied ten different juvenile correctional programs and the impact of institutional security practices on social control. His most recent books include: *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford 1999), which received the Outstanding Book Award from the Academy of Criminal Justice Sciences and the Michael Hindelang Outstanding Book Award from the American Society of Criminology; *Cases and Materials on Juvenile Justice Administration* (West 2000; 2nd Ed. 2005); and *Juvenile Justice Administration in a NUTSHELL* (West 2002). Feld has testified before state legislatures and the U. S. Senate, spoken on various aspects of juvenile justice administration to legal, judicial, and academic audiences in the United States and internationally. He worked as a prosecutor in the Hennepin County (Minneapolis) Attorney's Office and served on the

Minnesota Juvenile Justice Task Force (1992 -1994), whose recommendations the 1994 legislature enacted in its revisions of the Minnesota juvenile code. Between 1994 and 1997, Feld served as Co-Reporter of the Minnesota Supreme Court's Juvenile Court Rules of Procedure Advisory Committee.

Edward D. Ohlbaum is a trial lawyer who joined the Temple Law School Faculty in Spring 1985. The first holder of Temple's first chair in trial advocacy, the Jack E. Feinberg Professorship of Litigation, he was awarded the prestigious Richard S. Jacobson Award, given annually by the Roscoe Pound Foundation to one professor for "demonstrated excellence in teaching trial advocacy" in 1997. He is a former senior trial lawyer with the Defender Association of Philadelphia. Professor Ohlbaum is the senior member of the coaching team of the law school's championship mock trial team—which has won 5 national championships in the past thirteen years—and the architect of Temple's unique L.L.M. in Trial Advocacy. His programs have won awards from the American College of Trial Lawyers and the Committee on Professionalism of the American Bar Association. The author of three books, Professor Ohlbaum is a frequent speaker on evidence and advocacy at key international and domestic conferences.

Professor **Jane M. Spinak** is the Edward Ross Aranow Clinical Professor of Law. A member of the Columbia faculty since 1982, she co-founded the Child Advocacy Clinic, which currently represents adolescents aging out of foster care. During the mid-1990s, Professor Spinak served as attorney-in-charge

of the Juvenile Rights Division of The Legal Aid Society of New York City. From 2001 to 2006, she was the director of clinical education at the law school. In 2002, she became the founding chair of the board of the Center for Family Representation, an advocacy and policy organization dedicated to ensuring the procedural and substantive rights of parents in child-welfare proceedings. Professor Spinak is a member of the New York State Permanent Judicial Commission on Justice for Children. She has served on numerous tasks forces and committees addressing the needs and rights of children and families and has trained and lectured widely on those issues to lawyers, social workers and other mental health professionals. She has authored books and articles for child advocates and judges on child welfare and Family Court matters including a Permanency Planning Judicial Benchbook. Her current research focuses on Family Court reform as discussed in Adding Value to Families: The Potential of Model Family Courts (2002 Wisconsin Law Review 332) and Romancing the Court (Family Court Review, April 2008). In 2005, Professor Spinak was named a Human Rights Hero for her work on behalf of children by the ABA's Human Rights Magazine. In 2008 she was awarded the Howard A. Levine Award for Excellence in Juvenile Justice and Child Welfare by the New York State Bar Association. Professor Spinak is currently co-chairing the Task Force on Family Court in New York City recently established by the New York County Lawyer's Association.